

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Federal Housing Finance Agency; et al.,

Plaintiffs,

v.

Saticoy Bay, LLC,

Defendant.

Case No. 2:16-cv-02242-JAD-BNW

ORDER

Plaintiffs are the Federal Housing Finance Agency (“FFHA”), Federal National Mortgage Association, and Federal Home Loan Mortgage Corporation. ECF No. 1. Before the Court is their motion to amend the complaint to add certain series LLCs as defendants. ECF Nos. 75, 76. Defendant responded at ECF No. 102. Plaintiffs replied at ECF No. 103. The Court resolves the matter on the briefings, as it finds that oral argument is not necessary. For the reasons discussed below, the Court grants Plaintiffs’ motion.

I. BACKGROUND

This is one of the many cases before our courts in which the Plaintiffs seek to quiet title and a declaration that the foreclosure sale by a homeowners’ association did not extinguish their liens. *See* ECF No. 1 at 2. Plaintiffs filed their initial complaint in 2016 to confirm the validity of deeds of trusts for over 30 properties against Defendant Saticoy Bay, LLC. *See* ECF No. 76 at 1. Defendant is a master company comprised of smaller companies, called series LLCs, that operate under its umbrella. *Id.* Each property at issue, apart from one, is owned by a series LLC. *See* ECF No. 102 at 3. In their initial complaint, Plaintiffs only named Saticoy Bay, LLC as a defendant. ECF No. 1.

Throughout this case, the parties have disputed whether Plaintiffs were required to name the series LLCs as defendants. *See, e.g.,* ECF No. 66. In granting Plaintiffs’ summary judgment motion, the Court found that, under then existing Nevada law, Plaintiffs did not need to

1 individually sue the series LLCs. *See id.* (citing Nev. Rev. Stat. § 86.296(2)). Defendant appealed
2 the decision to the Ninth Circuit, and it certified the question to the Nevada Supreme Court. ECF
3 Nos. 67, 68. The Nevada Supreme Court held that “a series LLC created pursuant to NRS 86.296
4 must be sued in its own name . . . provided the series LLC has observed the corporate formalities
5 provided for in NRS 86.296(3).” *Fed. Hous. Fin. Agency v. Saticoy Bay LLC*, 139 Nev. Adv. Op.
6 15, 531 P.3d 1232, 1233 (2023). Consequently, the Ninth Circuit remanded the case to this Court
7 for further findings. *See* ECF No. 71. The Court held a status conference to discuss the Ninth
8 Circuit and Nevada Supreme Court rulings, and instructed Plaintiffs to move to amend their
9 complaint to add the relevant series LLCs as defendants. ECF No. 74.

10 Plaintiffs contend that the Court should grant leave to amend because their claims are not
11 futile, substantially prejudicial, or unduly delayed (and that, in any event, they have demonstrated
12 good cause and excusable neglect). ECF No. 76 at 6–18; ECF No. 103 at 2–3. Defendant disputes
13 each of Plaintiffs’ arguments. ECF No. 102 at 8–11. The Court first addresses whether Plaintiffs
14 have established good cause and excusable neglect before considering the parties’ arguments on
15 futility, prejudice, and undue delay.

16 **II. DISCUSSION**

17 **A. Good Cause and Excusable Neglect**

18 When a party moves to amend the pleadings after the expiration of the deadline
19 established in the scheduling order, courts review the request through a two-step process. First,
20 courts resolve the motion to amend the scheduling order, which is governed by the “good cause”
21 standard outlined in the Federal Rule of Civil Procedure 16(b). *See, e.g., Johnson v. Mammoth*
22 *Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). “Rule 16(b)’s ‘good cause’ standard
23 primarily considers the diligence of the party seeking the amendment.” *Id.* at 609. Courts look to
24 whether the deadline set in the scheduling order “cannot reasonably be met despite the diligence
25 of the party seeking the amendment.” *Id.* The party seeking amendment bears the burden of
26 establishing diligence. *See, e.g., Morgal v. Maricopa County Bd. Of Sup’rs*, 284 F.R.D. 452, 460
27 (D. Ariz. 2012).

1 In addition to showing good cause, Plaintiffs must also establish that their failure to act
2 was the result of excusable neglect. *See Branch Banking & Trust Co. v. DMSI, LLC*, 871 F.3d
3 751, 764–65 (9th Cir. 2017); *see also* LR 26-3. Courts consider at least four factors in
4 determining whether neglect is excusable: (1) the danger of prejudice to the opposing party; (2)
5 the length of the delay and its potential impact on the proceedings; (3) the reason for the delay;
6 and (4) whether the movant acted in good faith. *Branch Banking*, 871 F.3d at 765. The
7 determination of whether neglect is excusable is ultimately an equitable one, taking account of all
8 relevant circumstances surrounding the party’s omission. *See Pioneer Inv. Servs. Co. v.*
9 *Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 395 (1993). This equitable determination is left to
10 the discretion of the district court. *See Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004).

11 Plaintiffs moved to amend on November 17, 2023. ECF No. 75. Though the scheduling
12 order set the deadline to amend the pleadings and add parties for September 24, 2019, Defendant
13 filed an appeal after that deadline. *See* ECF No. 23 (Scheduling Order); ECF No. 62 (filing the
14 Notice of Appeal on December 17, 2020). The Ninth Circuit’s mandate was filed on August 22,
15 2023, and the district judge held a status conference regarding the judgment less than two months
16 later. *See* ECF No. 71 (Ninth Circuit Mandate); ECF No. 74 (Minutes of Proceedings regarding
17 Status Conference). At the conference, the district judge directed Plaintiffs to move to amend
18 within 30 days. ECF No. 74.

19 Plaintiffs argue that good cause exists because they could not have complied with the
20 original September 2019 deadline given that the Nevada Supreme Court opinion and subsequent
21 Ninth Circuit mandate were not filed until 2023. ECF No. 76 at 7. They further argue that they
22 were diligent in seeking amendment by following this Court’s instructions to move to amend by
23 November 17, 2023. *Id.* Defendant contends that Plaintiffs have not shown good cause because
24 Defendant advised them to add the series LLCs before the amendment deadline passed. ECF No.
25 102 at 4. Defendant also contends that Plaintiffs have not shown excusable neglect under the four
26 factors. *See id.* at 9–10. Plaintiffs reply that they have shown excusable neglect, even though the
27 standard does not apply here. ECF No. 103 at 2.

1 As discussed above, both the good cause and excusable neglect standards must be met.
2 First, the Court finds good cause because Plaintiffs have been diligent in seeking amendment.
3 Until the Nevada Supreme Court ruled on the question, it was unclear whether Plaintiffs needed
4 to sue each series LLC in its individual capacity. After the Nevada Supreme Court and Ninth
5 Circuit rulings were entered, Plaintiffs complied with the district judge's instructions to move to
6 amend within 30 days. In sum, the Court finds good cause for the delay because Plaintiffs could
7 not have met the 2019 deadline, no matter how diligently they may have acted, given that the
8 appellate court rulings came out years later. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
9 604, 609 (9th Cir. 1992).

10 Second, the Court finds that Plaintiffs' delay in moving to amend was the result of
11 excusable neglect. Even though the four-year delay (factor two) is long, the reason for this delay
12 (factor three) is excusable because the Plaintiffs did not know that they needed to add the series
13 LLCs as defendants until the Nevada Supreme Court issued its decision in July of 2023.
14 Moreover, the delay does not prejudice Defendant (factor one) because there are no new legal
15 theories or claims, and because Plaintiffs seek to add series LLCs that Defendant expected to be
16 part of the case. *See* ECF No. 102 at 4 (noting that Defendant repeatedly advised Plaintiffs to
17 name indispensable parties, i.e., the series LLCs). Lastly, the Plaintiffs acted in good faith (factor
18 four) by moving to amend in accordance with the Court's instruction at the status conference. *See*
19 ECF No. 74. Accordingly, the Court finds that the reasons for Plaintiffs' delay in moving to
20 amend satisfy the good cause and excusable neglect standards.

21 **B. Rule 15**

22 If the movant has established good cause and excusable neglect, courts will then examine
23 whether amendment is proper under Rule 15. Fed. R. Civ. P. 15(a). "The court should freely give
24 leave when justice so requires." *Id.* "The court considers five factors [under Rule 15] in assessing
25 the propriety of leave to amend—bad faith, undue delay, prejudice to the opposing party, futility
26 of amendment, and whether the plaintiff has previously amended the complaint." *United States v.*
27 *Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011). "The standard for granting leave to amend
28 is generous." *Id.* "The party opposing the amendment bears the burden of showing why leave

1 should be denied, including the burden of establishing prejudice.” *Underwood v. O’Reilly Auto*
 2 *Enterprises, LLC*, 342 F.R.D. 338, 343 (D. Nev. 2022) (internal citations omitted). Here, the
 3 parties dispute futility, prejudice, and undue delay.

4 **i. Futility**

5 When examining futility, courts apply an identical legal standard to the one under Federal
 6 Rule of Civil Procedure 12(b)(6). *See Miller v. Rykoff–Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir.
 7 1988). Under this standard, the Court is “bound to accept” plead facts as true. *Ashcroft v. Iqbal*,
 8 556 U.S. 662, 678 (2009). An amendment is futile only if no set of facts can be proved under the
 9 amendment that would constitute a valid claim or defense. *Miller*, 845 F.2d at 214. “Denial of
 10 leave to amend on [futility grounds] is rare. Ordinarily, courts will defer consideration of
 11 challenges to the merits of a proposed amended pleading until after leave to amend is granted and
 12 the amended pleading is filed.” *GMAC Mortgage LLC v. Nevada Association Services, Inc.*, No.
 13 2:13-cv-01157-GMN-NJK, 2018 WL 487101, at *2 (D. Nev. Jan. 5, 2018) (internal citations and
 14 quotations omitted). “Deferring ruling on the sufficiency of the allegations is preferred in light of
 15 the more liberal standards applicable to motions to amend and the fact that the parties’ arguments
 16 are better developed through a motion to dismiss or a motion for summary judgment.” *Id.*
 17 (internal citations omitted).

18 Here, Defendant argues that amendment is futile because the statute of limitations has run.
 19 ECF No. 102 at 11. Defendant states that 12 U.S.C. § 4617(b)(12)(A)(i), which provides a six-
 20 year statute of limitations, applies here. *Id.* Citing a Ninth Circuit case, Defendant argues that
 21 Plaintiffs’ claims are time barred because a foreclosure sale triggers the statute of limitations to
 22 run. *Id.* (citing *M&T Bank v. SFR Invs. Pool 1, LLC*, 963 F.3d 854, 857 (9th Cir. 2020). Plaintiffs
 23 argue that the Nevada Supreme Court’s decision in *U.S. Bank, N.A. v. Thunder Properties, Inc.*,
 24 should control, in which the court held that a HOA’s foreclosure sale alone is not enough to
 25 trigger the statute of limitations under Nev. Rev. Stat. § 40.010. 503 P.3d 299, 306 (Nev. 2022);
 26 ECF No. 76 at 8. Relying on this case, Plaintiffs contend that the statute of limitations has not
 27 started to run because they have not received notice of an affirmative act by the series LLCs to
 28 repudiate the lien. ECF No. 76 at 8.

1 Alternatively, Plaintiffs argue that even if the statute of limitations has run, they should
2 still be able to bring their claims against the series LLCs because these claims “relate[] back,”
3 under Rule 15(c). *Id.* at 10. Defendant argues that the proposed amendments do not relate back
4 because the series LLCs did not have notice of the claims and did not know, nor should have
5 known, that this action would be brought against them. ECF No. 102 at 12. Plaintiffs disagree.
6 ECF No. 76 at 9–15.

7 Here, considering that the Court is “bound to accept” Plaintiffs’ plead facts as true, it is
8 not clear that Plaintiffs would not be able to plead valid claims. Moreover, Plaintiffs’ and
9 Defendant’s arguments regarding the statute of limitations and Rule 15(c) issues would be better
10 developed through a motion to dismiss or motion for summary judgment. Therefore, the Court
11 finds that Plaintiffs’ proposed amendments are not futile.

12 **ii. Prejudice**

13 Defendant argues that allowing Plaintiffs to add the series LLCs as defendants will be
14 prejudicial because Defendant will need to continue litigating this case even though the Court has
15 already rendered judgment on the property it owns. ECF No. 102 at 10–11. Plaintiffs argue that
16 Defendant has not met its burden to establish substantial prejudice. ECF No. 103 at 9. Plaintiffs
17 further argue that amendment will not substantially prejudice Defendant because no additional
18 discovery is needed, and they are not introducing new facts or legal theories. *Id.*

19 Here, Plaintiffs’ proposed amendment seeks the same claims under the same legal
20 theories. Moreover, Defendant’s interests are aligned with those of the proposed defendants, such
21 that it will require little preparation to defend them. *See, e.g., Atl. Pier Assocs., LLC v. Boardakan*
22 *Rest. Partners, LP*, No. CIV.A. 08-4564, 2010 WL 3431875, at *5 (E.D. Pa. Aug. 30, 2010)
23 (holding that “adding Taubco as a defendant [] does not present new facts or legal theories which
24 would prejudice the defendants by requiring them to engage in additional discovery and
25 preparation to defend against them.”). Additionally, Defendant likely expected the series LLCs to
26 be part of the case because it repeatedly advised Plaintiffs to name the series LLCs as defendants.
27 *See* ECF No. 102 at 4. Thus, the Court finds that Defendant has not met its burden to show
28 prejudice.

